

2. REMARKS / DISCUSSION OF ISSUES

Claims 1-14, 16, 17, 20 and 21 are pending in the application.

I. Objection to the Drawings

The Replacement Sheets of Drawings (Replacement Sheets 3/6 and 6/6) address the objections raised in the Office Action and render the objection moot.

2. Rejections under 35 U.S.C. § 112

a. First Paragraph Rejections

The Courts have long explained that the written description requirement of § 112 requires the application to "convey with reasonable clarity to those skilled in the art that, as of the filing date sought, he or she was in possession of the invention."¹ The claimed subject matter need not be described "in haec verba" in the original specification in order to satisfy the written description requirement.² Rather, the test is whether a person of ordinary skill in the art would recognize that the applicant possessed what is claimed in the filed application as of the filing date of the filed application.³ The same standards govern whether new matter has been added to the specification.

Claims 20 and 21 are rejected under this section of the Code. The Office Action asserts that the filed application provides no basis for the feature: "the second electrode layer overlying the organic light emissive material and the first electrode layer underlying the organic emissive material are in electrical connection through the thickness of the organic light emissive material." Applicants respectfully direct attention to Fig. 4, for example, which shows, for example, LED1. The overlying cathode 17-1, and the

¹ *Vas-Cath Inc. v. Mahurkar*, 935 F.2d 1555, 1563-64 (Fed. Cir. 1991); see also *In re Wright*, 866 F.2d 422, 424 (Fed. Cir. 1989) ("When the scope of a claim has been changed by amendment in such a way as to justify an assertion that it is directed to a *different invention* than was the original claim, it is proper to inquire whether the newly claimed subject matter was *described* in the patent application when filed as the invention of the applicant. That is the essence of the so-called 'description requirement' of § 112, first paragraph. . . .").

² *In re Wright*, 866 F.2d at 425.

³ *Noelle v. Lederman*, 355 F.3d 1343, 1348 (Fed. Cir. 2004).

underlying anode 12-1, sandwich a layer of organic light emissive material. Applicants respectfully submit that one of ordinary skill in the art would readily appreciate that Applicants had in their possession at least these features of claims 20 and 21 at the time of filing the application.

The Office Action also rejects claim 10, and asserts that the filed application fails to disclose "treating an area of the organic light emissive material overlying the second electrode to be electrically conductive." Applicants respectfully direct attention to claim 15 of the filed application, which provides support nearly *in ipsiis verbis*.

b. Second Paragraph Rejections

The Office Action asserts that claims 20 and 21 are indefinite because "It cannot be determined how the first and second electrodes can be adapted to supply charge carriers into the organic material to cause the organic material to emit light and be electrically connected through the thickness of the organic light emissive material."

The second paragraph of § 112 requires the specification of a patent to "conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention." 35 U.S.C. § 112, P2 (2000). To satisfy this requirement, the claim, read in light of the specification, must apprise those skilled in the art of the scope of the claim.⁴ Moreover, claims need not "be plain on their face in order to avoid condemnation for indefiniteness; rather, that the claims be amenable to construction, however difficult that task may be." The requirement to "distinctly" claim means that the claim must have a meaning discernible to one of ordinary skill in the art when construed according to correct principles.⁵ Only when a claim remains insolubly ambiguous without a discernible meaning after all reasonable attempts at construction must a court declare it indefinite.⁶

In one embodiment, an LED (e.g., LED1) is formed by disposing an organic light emissive material 16-1 between an anode 12-1 and a cathode 17-1. The application of a

⁴ See *Miles Lab. v. Shandon, Inc.*, 997 F.2d 870, 875 (Fed. Cir. 1993).

⁵ *Union Pac. Res. Co. v. Chesapeake Energy Corp.*, 236 F.3d 684, 692 (Fed. Cir. 2001); *Rosemount, Inc. v. Beckman Instruments, Inc.*, 727 F.2d 1540, 1547 (Fed. Cir. 1984).

⁶ *Exxon Research & Eng'g Co. v. United States*, 265 F.3d 1371, 1375 (Fed. Cir. 2001).

voltage creates a conductive path between the anode 12-1 and the cathode 17-1. The only way for current to flow between anode and cathode is between the organic light emissive material 16-1. The flow of current induces light emission through basic quantum mechanical principles. Thereby an electrical connection exists between the anode and cathode. But for the supply of carriers between the two electrodes caused by the potential drop, light emission would not occur. So, Applicants respectfully submit that the claim terminology would be readily apprised of one having ordinary skill in the art of the subject matter of claims 20 and 21.

3. Rejections under 35 U.S.C. § 102

Claims 1, 6-8 and 17 are rejected under 35 U.S.C. § 102(b) as allegedly being unpatentable over *Toyota Corp.* (JP2002-313572—Translation provided in previous Office Action). For at least the reasons set forth below, Applicants respectfully submit that a *prima facie* case of anticipation has not been established and all claims are patentable over the applied art.

i. Claim 1

Claim 1 recites:

*An electroluminescent device comprising a substrate, a light emissive structure on the substrate, the light emissive structure comprising organic light emissive material disposed between **first and second electrode layers** for supplying charge carriers into the organic material to cause it to emit light, the first and second electrode layers respectively underlying and overlying the organic light emissive material, and an electrically conductive region underlying the light emissive structure on the substrate, the second electrode layer and the electrically conductive region being in electrical connection through the thickness of the organic light emissive material.*

The Office Action again directs Applicants to the organic electroluminescence film 32a for the organic light emissive material; anode 31a and negative pole 33a for the first and second electrodes; and to anode 31b for the alleged disclosure of the electrically

conductive region underlying the light emissive structure. Specifically, the Office Action asserts that the second overlying electrode layer 33a and the underlying conductive region 31b are in electrical connection through the thickness of the OL emissive material 32a.

Applicants respectfully submit that anode 31b is not connected through the layer 32a, but rather anode 31b is connected to cathode 33a to effect a series connection of the OL layered product 3a and the OL layered product 3b. As such, no connection as claimed in claim 1 is provided.

Moreover, in the Response to Remarks, the Office Action asserts "It is unclear from Applicants arguments why the anode cannot be both connected through the layer 32a and connected to the cathode 33a to effect a series connection." Applicants respectfully submit that there is no disclosure in reference to *Toyota Corp.* other than the series connection described in paragraphs [0012] through [0014] and as discussed above. Applicants respectfully submit that without the disclosure of each and every element of the claimed invention in *Toyota Corp.*, a *prima facie* case of anticipation cannot be established.

Thus, and for at least the reasons set forth above, Applicants respectfully submit that the applied art fails to disclose at least one feature of claim 1. Because the applied art fails to disclose at least one feature of claims 1 a *prima facie* case of anticipation has not been established based thereon. Thus, claims 1 and 9 are patentable over the applied art. In addition, claims 2-8 and 10-14, 16, 17, which depend from claims 1 and 9, respectively, are patentable for at least the same reasons and in view of their additionally recited subject matter.

4. Rejections under 35 U.S.C. § 103

A. Claims 9 and 16 were rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over *Toyota Corp.*

B. Claims 2,4,5 and 14 were rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over *Toyota Corp.* in view of *Nishio, et al.* (U.S. Patent 6,046,547)

C. Claims 3, 10, 11 and 12 were rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over *Toyota Corp.* in view of *Kobayashi* (US Patent Application Publication 20020057051).

ii. Claim 9

Claim 9 recites:

*A method of fabricating an electroluminescent device comprising fabricating a light emissive structure on a substrate, the **light emissive structure comprising organic light emissive material disposed between first and second electrode layers** for supplying charge carriers into the organic material to cause it to emit light, the first and second electrode layers respectively underlying and overlying the organic light emissive material, and **an electrically conductive region underlying the light emissive structure on the substrate, and forming an electrical connection between the second electrode layer and the electrically conductive region through the thickness of the organic light emissive material.***

As it relates to the emphasized features, the rejection of claim 9 is essentially the same as the rejection of claim 1. To wit, the Office Action relies on *Toyota Corp.* for these features. Applicants respectfully submit that the applied art fails to disclose at least one feature of claim 9 for at least the reasons set forth above.

Moreover, in rejecting claim 9, the Office Action states:

“Therefore the structure limitations of claim 9 are the same as those disclosed in Toyota. Toyota does not expressly disclose a method of fabricating a device. However, one of ordinary skill in the art would recognize that manufacturing the claimed device will comprise Applicant’s steps of forming the electroluminescent device. Since only generic method steps and no specific method steps are claimed, the structure disclosed in Toyota anticipates Applicant’s recited method step limitation of claim 9.”

Applicants respectfully submit that the requisite motivation to render a *prima facie* case of obviousness has not been accorded. Notably, “A factfinder should be aware, of course, of the distortion caused by hindsight bias and must be cautious of arguments

reliant upon *ex post* reasoning.”⁷ Moreover, if there is no suggestion to combine the teachings of the applied art, other than the use of Applicants’ invention as a template for its own reconstruction, a rejection for obviousness is improper.⁸ In furtherance to the need for the suggestion to combine the teachings of the applied art, it is established that rejections on obviousness grounds cannot be sustained by mere conclusory statements: instead there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.⁹

Rather than provide the reasoning as to why the method sequence is obvious, a conclusory statement is provided in support of obviousness. To this end, there is no citation of the allegedly known methods in the applied art, and no reason as to why one of ordinary skill in the art would transplant the allegedly known method steps into *Toyota Corp.* has been provided. Rather, a conclusion that Applicants’ ‘generic’ method steps are obvious unto themselves is provided. Accordingly, and for at least the reasons set forth above, Applicants respectfully submit that the Office Action fails to establish the required motivation and suggestion for combining art in the establishment of a *prima facie* case of obviousness.

Accordingly, Applicants respectfully submit that a *prima facie* case of obviousness has not been established, and claim 9 is patentable over the applied art.

⁷ *KSR Int’l Co. v. Teleflex Inc.*, 127 S. Ct. 1727; 82 U.S.P.Q.2D 1385 (2007). See *Graham v. John Deere Co.*, 383 U.S. 1, 17, 148 USPQ 459, 467 (1966) (warning against a “temptation to read into the prior art the teachings of the invention in issue” and instructing courts to “guard against slipping into the use of hindsight”) (quoting *Monroe Auto Equipment Co. v. Heckethorn Mfg. & Supply Co.*, 332 F.2d 406, 412 (CA6 1964)).”

⁸ *Ex parte Crawford, et al.* Appeal 20062429, May 30, 2007.

⁹ *KSR Int’l v. Teleflex*, 127 S. Ct. at 1741.

General Comments on Rejections of Dependent Claims

Since each of the dependent claims depends from a base claim that is believed to be in condition for allowance, Applicant believes that it is unnecessary at this time to argue the allowability of each of the dependent claims individually. Applicant does not, however, necessarily concur with the interpretation of any dependent claim as set forth in the Office Action, nor do Applicant concurs that the basis for the rejection of any dependent claim is proper. Therefore, Applicant reserves the right to specifically address the patentability of the dependent claims in the future, if deemed necessary.

Conclusion

In view the foregoing, applicant(s) respectfully request(s) that the Examiner withdraw the objection(s) and/or rejection(s) of record, allow all the pending claims, and find the application in condition for allowance.

If necessary, the Commissioner is hereby authorized in this, concurrent, and further replies to charge payment or credit any overpayment to Deposit Account Number 50-0238 for any additional fees, including, but not limited to, the fees under 37 C.F.R. §1.16 or under 37 C.F.R. §1.17.

If any points remain in issue that may best be resolved through a personal or telephonic interview, the Examiner is respectfully requested to contact the undersigned at the telephone number listed below.

Respectfully submitted on behalf of:
Phillips Electronics North America Corp.

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